UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SUPPRESSED FILED

JAN 31 2017

U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

UNITED STATES OF AMERICA, Plaintiff, v. SHAUN R. HAYES and MICHAEL H. LITZ, Defendants.	No. S1- 4:16 CR 157 AGF

SUPERSEDING INDICTMENT

The Grand Jury charges that:

COUNT ONE

INTRODUCTION

At all times relevant to this indictment:

Excel Bank

1. Excel Bank was a financial institution and insured bank, the deposits of which were insured by the Federal Deposit Insurance Corporation (FDIC). Excel Bank was chartered by the State of Missouri. Excel Bank was the wholly-owned subsidiary of Investors Financial Corporation of Pettis County, Inc., (IFC) a Missouri corporation and registered bank holding company. Excel Bank was headquartered in Sedalia, Missouri, and principally served that geographic area.

2. In or about October, 2007, Shaun R. Hayes purchased a majority and controlling stock interest in IFC and, as a result, he exercised substantial control over the affairs of Excel Bank. He was installed as a director and vice chairman of IFC and he became a paid consultant for Excel Bank. At the direction of Shaun Hayes, Excel Bank opened a Loan Production Office (LPO) in Clayton, Missouri, through which commercial real estate and other loans were solicited and processed.

3. Shaun Hayes exercised control over the lending activities of the LPO in Clayton. Shaun Hayes hired Timothy P. Murphy, a prior banking associate, as the primary loan officer at the Clayton LPO. With the support of Shaun Hayes, Timothy Murphy became an executive vice president of the bank. Timothy Murphy worked under the direction and control of Shaun Hayes.

4. Under Shaun Hayes's direction, the commercial lending activity of Excel Bank dramatically increased as a result of loans generated at the Clayton LPO. By 2009, the outstanding commercial real estate loan balances at Excel Bank had doubled. Loans supported by Shaun Hayes were routinely approved at Excel Bank. These so-called "Friend of Shaun" loans were often approved absent the normal underwriting protections designed to safeguard the soundness of the bank. These safeguards include consideration of payment history, appraisals and status of real estate taxes due on underlying security, lending limit for a particular borrower and whether an insider, such as Shaun Hayes, has an interest in the loan transaction. FDIC examiners determined that a number of the substantial loans generated at the Clayton LPO were substandard and were made through unsafe banking practices. Excel Bank's position as the

lender was often not protected through public recording of notes and assignments against the underlying property serving as security for the note.

5. In an FDIC examination occurring in October, 2009, Excel Bank was downgraded to the status of a problem bank due to deficiencies in its lending practices.

6. In May, 2009, IFC received $4,000,000.00 in funds from the Troubled Asset Relief Program (TARP) which was designed to restore liquidity and stability to the financial system in the wake of the financial crisis.

7. In October, 2012, Excel Bank was closed by the Missouri Division of Finance and the FDIC was named as the receiver. The bank was closed as a result of the finding that its financial condition was critically deficient. Millions of dollars in loans were written off as losses and Excel Bank failed to make most of the payments required under the TARP program.

McKnight Man and the Eighteen Investments Loan Pools

8. Shaun Hayes and Michael Litz were co-owners of McKnight Man I LLC (McKnight Man) and, in July, 2009, Centrue Bank was threatening to sue Shaun Hayes and Michael Litz as guarantors on the bank's loan to McKnight Man. With interest, the delinquency on the McKnight Man loan was approximately $900,000.00. Shaun Hayes listed McKnight Man on his conflicts list at Excel Bank. Under state and federal regulations, a loan for the benefit of McKnight Man could not be lawfully made without the prior approval of the board of directors at Excel Bank because of Shaun Hayes's insider status.

9. In July, 2009, Eighteen Investments, which was a commercial and residential real estate firm owned in part by Michael Litz, was delinquent on millions of dollars in loans at numerous financial institutions in the St. Louis area and elsewhere. Eighteen Investments was delinquent

on approximately $3,694,765.66 in real estate loans at Centrue Bank and approximately $12,900,000.00 in real estate loans at National City Bank.

10. In July, 2009, Eighteen Investments was delinquent on $2,685,000.00 in loans at Excel Bank. As of July, 2009, the lending limit at Excel Bank for Eighteen Investments was approximately $5,200,000.00. In the FDIC examination of October, 2009, approximately $2,300,000.00 of the Eighteen Investments loans at Excel Bank were adversely classified as substandard.

11. On or about June 30, 2009, Centrue Bank brought suit in St. Louis County against Eighteen Investments, Michael Litz and others. The suit sought damages in the amount of $3,896,355.35.

12. In July and August, 2009, Shaun Hayes negotiated with Centrue Bank to purchase the pool of Eighteen Investments loans from the bank. Shaun Hayes and Michael Litz also sought to prevent Centrue Bank from suing them on the McKnight Man loan. Centrue Bank agreed to sell the pool of Eighteen Investments loans at a discount but required the McKnight Man loan to be purchased at par or full value.

13. On or about August 27, 2009, Shaun Hayes caused Timothy Murphy to sign an agreement in which Excel Bank agreed to purchase from Centrue Bank twenty-one of Eighteen Investments loans at a cost of $2,400,000.00. Shaun Hayes and Timothy Murphy did not seek or obtain approval of this agreement from the loan committee or the board of directors at Excel Bank. Delinquent real estate taxes were due on many of the underlying properties. This transaction was completed at the direction of Shaun Hayes and underwriting safeguards were not taken on behalf of Excel Bank. This transaction was not reflected in the records of Excel Bank.

The ownership interest of Excel Bank in these notes and deeds of trust was not protected by the public recording of that interest against the properties serving as security for each of the notes.

14. In July and August, 2009, in an effort to generate funds to pay Centrue Bank, Michael Litz persuaded LS to serve as a straw party for purposes of issuing a loan at Excel Bank in LS's name. LS was very creditworthy and already had one loan at Excel Bank. On or about August 26, 2009, LS signed a promissory note and a Commercial Security Agreement which showed him borrowing $3,344,528.27 from Excel Bank secured by the assignment of notes and deeds of trust on properties, plus thirteen second deeds of trust and a junior lien on the residence of Michael Litz. There was no reference to Eighteen Investments in the note and Commercial Security Agreement. The loan was for a 30-day period. Michael Litz assured LS that they would sell the properties to pay off the note and that he would be paid $25,000.00 in the transaction. Michael Litz further assured LS that he would not be held responsible for this loan. There was no public recording of the purported assignments of notes and deeds of trust to LS.

15. On or about August 27, 2009, Timothy Murphy, acting with the full knowledge of Shaun Hayes, presented a loan in the name of LS to the loan committee at Excel Bank. Timothy Murphy represented that LS was using the proceeds of the loan to buy twenty notes and deeds of trust at a discount. As Shaun Hayes well knew and caused to be concealed from the loan committee, he and Timothy Murphy had obligated Excel Bank to buy the notes and deeds of trust from Centrue Bank and the LS loan was designed to generate the money for that purchase. Excel Bank funds from the LS loan in the amount of $2,403,569.00 were paid to Centrue Bank. The notes and deeds of trust were never assigned to LS.

16. On or about August 12, 2009, Shaun Hayes caused Excel Bank to purchase the pool of Eighteen Investments loans at National City Bank at a discount. Shaun Hayes caused Timothy Murphy to sign the contract in which Excel Bank purchased the pool. Shaun Hayes and Timothy Murphy did not seek or obtain the approval for this agreement from the loan committee or the board of directors of Excel Bank. The transaction was not reflected on the books of Excel Bank. Shaun Hayes caused funds totaling approximately $8,800,000.00 to be loaned by Excel Bank to three additional individuals to pay National City Bank on the agreement with Excel Bank.

17. Shaun Hayes caused the purchases of the pools of loans by Excel Bank to be concealed from the bank's board of directors because, as a result of the purchases, Excel Bank's exposure on the Eighteen Investments properties increased, in fact, to approximately $14,700,000.00 which far exceeded the allowable lending limit of approximately $5,200,000.00.

18. At the direction of Shaun Hayes, the remaining proceeds from the LS loan in the amount of $906,223.38 were paid to Centrue Bank to pay off the McKnight Man loan at that bank. This payment constituted a misapplication of Excel Bank funds and unlawful self-dealing by Shaun Hayes, an insider who, in fact, had substantial control over loan transactions at Excel Bank. Shaun Hayes structured this aspect of the LS loan transaction so that there would be no record at Excel Bank reflecting the payment on behalf of McKnight Man. The check payment to Centrue Bank made no reference to McKnight Man. The Credit Action Form relied upon by the loan committee listed properties as purported collateral for the LS loan but included no reference to McKnight Man or properties included in the McKnight Man development.

19. At the direction of Shaun Hayes, McKnight Man was never shown as obligated on the records of Excel Bank for the $906,223.38 payment. As a result, Shaun Hayes and Michael Litz, as guarantors of the loan at Centrue Bank that had been paid off, benefitted directly from that payment. Their liability on that note had been erased and Shaun Hayes and Michael Litz were not sued by Centrue Bank. In addition, since no loan involving McKnight Man was carried over to the records of Excel Bank, Shaun Hayes and Michael Litz made no payments to Excel Bank.

20. Shaun Hayes and Michael Litz caused false statements to be made to Excel Bank and false entries placed into the books and records of Excel Bank by causing the loan to LS to be recorded as an obligation when, in fact, $2,403,569.00 of the loan was for the benefit of Eighteen Investments, $906,223.38 of the loan was for the benefit of Shaun Hayes and Michael Litz as part of McKnight Man and LS understood he had no responsibility for the loan.

21. Beginning in or about June, 2009, with the exact date unknown to the Grand Jury, and continuing up to and including October, 2012, with the exact date unknown to the Grand Jury, in the Eastern District of Missouri and elsewhere,

SHAUN R. HAYES and MICHAEL H. LITZ,

the defendants, together with other persons known and unknown to the Grand Jury, knowingly executed and attempted to execute a scheme and artifice to defraud Excel Bank, a financial institution the deposits of which were insured by the Federal Deposit Insurance Corporation, and to obtain moneys, funds, credits, assets, securities and other property owned by, and under the custody and control of Excel Bank, by means of materially false and fraudulent pretenses, representations and promises.

22. It was part of the scheme that Shaun Hayes and Michael Litz jeopardized the financial soundness of Excel Bank by causing Excel Bank to purchase at a discount millions of dollars in notes and loans on which Eighteen Investments was delinquent, said loans and notes being adversely classified by regulators as substandard and harmful to the bank.

23. It was further part of the scheme that Shaun Hayes caused Excel Bank to enter into contracts with Centrue Bank and National City Bank to purchase pools of delinquent loans and notes and, further, he caused the contracts and transactions to be concealed from the Excel Bank board of directors and to be withheld from being recorded in the normal course of the bank's business.

24. It was a further part of the scheme that Shaun Hayes and Michael Litz recruited persons to serve as borrowers on loans from Excel Bank which were made for the benefit of Eighteen Investments, Shaun Hayes and Michael Litz. These persons included nominees and straw parties and others who were acting for the benefit of Eighteen Investments, Shaun Hayes and Michael Litz. Underwriting safeguards designed to protect Excel Bank were not followed in making these loans. The totals of these note and loan purchases far exceeded the lending limit at Excel Bank for loans involving Eighteen Investments. Michael Litz and Eighteen Investments maintained complete control over the rents and profits from the properties listed as security for these loans. Michael Litz made virtually no payments on these loans from these rents and profits.

25. It was a further part of the scheme that Michael Litz persuaded LS to sign a note for $3,344,528.27 to Excel Bank for the benefit of Michael Litz and Eighteen Investments. Michael Litz assured LS that he would not be held liable on the note and that he would receive

$25,000.00 for helping Michael Litz and Eighteen Investments. Proceeds from this loan in the amount of $2,403,569.00, more or less, were paid by Excel Bank to Centrue Bank for the purchase of the pool of Eighteen Investments notes and loans which Shaun Hayes caused to be purchased by Excel Bank.

26. It was a further part of the scheme that Shaun Hayes and Michael Litz caused proceeds from the LS loan in the amount of $906,223.00 to be paid to Centrue Bank in full payment of the delinquent McKnight Man loan at Centrue Bank. This payment was made for the direct benefit of Shaun Hayes and Michael Litz who, as guarantors on the McKnight Man loan, faced an imminent lawsuit by Centrue Bank.

27. It was a further part of the scheme that Shaun Hayes caused to be concealed from the Loan Committee and directors at Excel Bank the true purpose of the LS loan and the other loans at Excel Bank, the proceeds of which were used for the benefit of Shaun Hayes and Michael Litz. Due to Shaun Hayes's majority stock ownership position and his status as a consultant at Excel Bank, the use of the LS loan proceeds to pay Shaun Hayes's McKnight Man liability constituted self-dealing in violation of federal and state banking regulations.

28. It was a further part of the scheme that Shaun Hayes and Michael Litz caused false statements to be made to Excel Bank and false entries to be placed in the books and records of Excel Bank by causing the loan to LS to be misrepresented as a formal obligation when, in fact, $2,403,569.00 of the loan proceeds were paid for the benefit of Eighteen Investments and Michael Litz and $906,223.000 of the loan proceeds were paid for the benefit of Shaun Hayes and Michael Litz as part of McKnight Man.

29. It was a further part of the scheme that Shaun Hayes and Michael Litz controlled the LS loan and funds associated with that loan to meet expenses of Eighteen Investments and McKnight Man. Shaun Hayes and Michael Litz misappropriated $90,316.81 in escrowed fire insurance proceeds that were due to Excel Bank as a result of the purchase of the pool of loans from Centrue Bank. These funds were used to meet interest payment obligations owed by Eighteen Investments and McKnight Man.

30. It was a further part of the scheme that Shaun Hayes and Michael Litz misapplied $16,405.84 in proceeds of the LS loan to fund insufficient funds checks which Eighteen Investments had submitted to Excel Bank as payments on prior loans at the bank.

31. It was a further part of the scheme that Shaun Hayes and Michael Litz caused $99,266.46 to be added to the LS loan to pay delinquent real estate taxes owed by Eighteen Investments for 2007, 2008 and 2009 and to avoid foreclosure by St. Louis County on properties listed as collateral for the LS loan. LS was not made aware of this delinquency or this addition to the loan.

32. It was a further part of the scheme that Michael Litz and Eighteen Investments made no payments on the LS loan. Funds allocated to the LS loan were booked as an interest payment on the LS loan. Shaun Hayes and Michael Litz also brought in new individuals to borrow more money from Excel Bank on substandard "Friends of Shaun" loans to pay down portions of the LS loan and other outstanding loans relating to the Eighteen Investments loan pools. This was done in an effort to mislead the Excel Bank board of directors and bank regulators by falsely showing that the loans were being reduced in the normal course of business.

33. It was a further part of the scheme that, in an effort to avoid foreclosure by the bank holding the first deeds of trust on certain properties listed as collateral for the LS loan, Michael Litz arranged a substandard "Friend of Shaun" loan at Excel Bank in which Murdoch Management LLC, an entity formed by an associate of Michael Litz, was loaned a total of $726,700.00, more or less. These loan proceeds were used to eliminate first deeds of trust and, in addition, to pay principal and interest on the LS loan and to make payments on an outstanding judgment against Eighteen Investments that was unrelated to the LS loan.

34. It was a further part of the scheme that Shaun Hayes and Michael Litz attempted to ensure that the LS loan was documented in a manner that concealed the true purpose and nature of the LS loan from the Excel Bank board of directors and federal and state bank regulators. Michael Litz caused LS to sign extensions of the note with the continued assurances that LS would not be liable. In time LS became concerned and demanded to be released from the note. In October, 2010, Shaun Hayes and Tim Murphy caused a demand letter to be sent to an attorney for LS in which the LS loan was declared to be in default and that it would not be renewed. In or about November, 2010, at a point when LS threatened a lawsuit, Shaun Hayes, Michael Litz and Tim Murphy agreed on behalf of Excel Bank to forego any collection action against LS for a period of time. This agreement was not presented to nor was it authorized by the board of directors. The declaration of loan default and the agreement to forego collection were concealed from the Excel Bank board of directors and the FDIC in December, 2010.

35. It was a further part of the scheme that Shaun Hayes attempted to conceal the status of the LS loan from the FDIC regulators in December, 2010. Shaun Hayes caused Timothy Murphy to prepare a Loan Status Report dated December 1, 2010 which supported the viability

of the LS loan and which falsely stated that the "primary source of repayment will come from the borrower's cash flow" even though LS was denying liability on the note and there was an agreement to forego collection. The FDIC auditors discovered the challenge to the LS loan and adversely classified that loan and other "Friends of Shaun" loans involving Eighteen Investments as substandard.

36. On or about August 31, 2009, in the Eastern District of Missouri,

SHAUN R. HAYES and MICHAEL H. LITZ,

the defendants, acting individually and aided and abetted by one another and others, knowingly executed and attempted to execute the above-described scheme by causing checks in the amounts of $2,403,568.89 and $906,223.38 to be written from Excel Bank and paid to Centrue Bank.

In violation of Title 18, United States Code, Sections 1344 and 2.

COUNT TWO

The Grand Jury further charges that:

1. The allegations set forth in paragraphs 1 through 35 of Count 1 are re-alleged and incorporated as though set forth in full herein.

2. Beginning in or about June, 2009, with the exact date unknown to the Grand Jury, and continuing up to and including October, 2012, with the exact date unknown to the Grand Jury, in the Eastern District of Missouri and elsewhere,

SHAUN R. HAYES and MICHAEL H. LITZ,

the defendants, together with persons known and unknown to the Grand Jury, did knowingly and willfully combine, conspire, confederate and agree together and with each other to commit bank fraud in violation of Title 18, United States Code, Section 1344 as set forth in Count 1, that is to execute a scheme and artifice to defraud Excel Bank, a financial institution the deposits of which were insured by the Federal Deposit Insurance Corporation, and to obtain moneys, funds, credits, assets, securities and other property owned by, and under the custody and control of Excel Bank by means of materially false and fraudulent pretenses, representations and promises.

In violation of Title 18, United States Code, Section 1349.

COUNT THREE

The Grand Jury further charges that:

1. The allegations set forth in paragraphs 1 through 20 and 22 through 35 of Count 1 are hereby re-alleged and incorporated as though set forth in full herein.

2. Throughout 2009 Shaun Hayes was an agent and employee of Excel Bank and Shaun Hayes was connected to Excel Bank as a consultant, as an owner and director of the bank holding company which owned Excel Bank and through the substantial control he exercised over loans made by Excel Bank.

3. On or about August 31, 2009, in the Eastern District of Missouri,

SHAUN R. HAYES and MICHAEL H. LITZ,

the defendants, acting individually and aided and abetted by one another and others, and acting with the intent to injure and defraud Excel Bank, an insured bank and a financial institution the deposits of which were insured by the Federal Deposit Insurance Corporation, did willfully misapply moneys, funds and credits of and intrusted to the custody and care of Excel Bank in that the defendants caused Excel Bank to issue and pay a check payable to Centrue Bank in the amount of $906,223.38 as part of the LS loan which had the stated purpose of purchasing notes and deeds of trust when, as the defendants well knew, the check was paid for the direct benefit of Shaun Hayes and Michael Litz by paying off the McKnight Man loan at Centrue Bank on which Shaun Hayes and Michael Litz were guarantors.

In violation of Title 18, United States Code, Sections 656 and 2.

COUNT FOUR

The Grand Jury further charges that:

1. The allegations set forth in paragraphs 1 through 20 and 22 through 35 of Count 1 are re-alleged and incorporated as though set forth in full herein.

2. In or about August, 2009, Michael Litz sought the help of LS, a friend, to assist him and his Eighteen Investments business which was in desperate financial condition. Acting for the benefit of Michael Litz and Eighteen Investments and with assurances from Michael Litz that he would not be held liable on the note, LS signed a note to Excel Bank in the amount of $3,344,528.27. Well knowing that LS was, in fact, a straw party and nominee, Shaun Hayes caused a Credit Action Form to be prepared at Excel Bank which was required for approval by the loan committee at Excel Bank. The Credit Action Form falsely stated that a source of repayment would be LS's cash flow. LS did not make that commitment and acted with the assurance that he would not be held liable on the note. In addition, knowing that the Credit Action Form did not include the fact that $906,000.00 of the proceeds of the LS loan would be used to pay off the McKnight Man loan at Centrue Bank, Shaun Hayes caused the omission of a material fact from the Credit Action Form.

3. On or about August 26, 2009, as part of the approval process for the LS loan, Shaun Hayes caused Timothy Murphy to make representations to the loan committee at Excel Bank which Shaun Hayes knew to be false in that: (1) LS was identified as the buyer of certain notes and deeds of trust when, in fact, Shaun Hayes caused Excel Bank to buy the notes from Centrue Bank; (2) the loan was to be secured by the assignment of certain notes and deeds of trust when, in fact, no such assignments were made for the benefit of LS and no public filings of assignments were made for the protection of Excel Bank or LS; and (3) Shaun Hayes caused the omission of the material fact that $906,000.00 in the LS loan proceeds would be used to pay off the McKnight Man loan.

4. On or about August 25, 2009, in the Eastern District of Missouri and elsewhere,

SHAUN R. HAYES,

the defendant, acting with the intent to injure and defraud Excel Bank, an insured bank the deposits of which were insured by the Federal Deposit Insurance Corporation, and to deceive any officer of Excel Bank and any agent and examiner appointed to examine the affairs of such bank, knowingly caused to be made a false entry in the books, reports and statements of Excel Bank, in that, in order to obtain approval of the LS loan, he caused to be prepared a Credit Action Form which falsely states that LS was acquiring certain notes and deeds of trust when, in fact, Excel Bank was acquiring them and that LS's cash flow would constitute a source of repayment when, in fact, LS made no such commitment, and he further caused to be omitted from the Credit Action Form the material fact that a substantial amount of the loan proceeds would be used to pay off the McKnight Man loan at Centrue Bank.

In violation of Title 18, United States Code, Section 1005.

COUNT FIVE

The Grand Jury further charges that:

1. The allegations set forth in paragraphs 1 through 35 of Count 1 are re-alleged and incorporated as though set forth in full herein.

2. Prior to July, 2009, fire insurance proceeds were put in escrow at Centrue Bank based on fire damage to an Eighteen Investments property in Chicago, Illinois which later was included as security on the LS loan. Centrue Bank held the money in escrow pending the repair of the property. Excel Bank bought the loan on that property from Centrue Bank and was entitled to the escrowed fire insurance proceeds for use in returning the property to full value. As security for the LS loan, the property was valued as if repaired. Shaun Hayes and Michael Litz authorized Centrue Bank to keep $90,316.81 of the fire insurance proceeds to further reduce the liability of Eighteen Investments for interest due on the pool of properties and to reduce the liability of McKnight Man for additional interest due. Shaun Hayes and Michael Litz also authorized additional payments from the escrowed fire insurance proceeds in amounts totaling $122,032.12, more or less, for the benefit of Eighteen Investments. None of the fire insurance proceeds were used to improve the property in Chicago that had been burned.

3. On or about August 28, 2009, in the Eastern District of Missouri,

SHAUN R. HAYES and MICHAEL H. LITZ,

the defendants, acting individually and aiding and abetting one another and others, knowingly executed the scheme set forth in Count 1 in that Shaun Hayes and Michael Litz authorized Centrue Bank to keep $90,316.81 in escrowed fire insurance proceeds in order to pay interest obligations of Eighteen Investments and McKnight Man and thereby reduce the value of the security for Excel Bank on the LS loan.

In violation of Title 18, United States Code, Sections 1344 and 2.

COUNT SIX

The Grand Jury further charges that:

1. The allegations set forth in paragraphs 1 through 20 and 22 through 35 of Count 1 are re-alleged and incorporated as though set forth in full herein.

2. Throughout January, 2010, Shaun Hayes was an agent and employee of Excel Bank and Shaun Hayes was connected to Excel Bank as a consultant, as an owner and director of the bank holding company which owned Excel Bank and through the substantial control he exercised over loans made by Excel Bank.

3. On or about January 19, 2010, in the Eastern District of Missouri and elsewhere,

SHAUN R. HAYES and MICHAEL H. LITZ,

the defendants, acting individually and aiding and abetting one another and others, and acting with the intent to injure and defraud Excel Bank, an insured bank the deposits of which were insured by the Federal Deposit Insurance Corporation, did willfully misapply moneys, funds and credits of and intrusted to the custody and care of Excel Bank in that the defendants caused Excel Bank to transfer $16,405.84 in proceeds of the LS loan to fund insufficient funds checks which Eighteen Investments had submitted to Excel Bank as payments on prior loans at Excel Bank.

In violation of Title 18, United States Code, Sections 656 and 2.

COUNT SEVEN

The Grand Jury further charges that:

1. The allegations set forth in paragraphs 1 through 35 of Count 1 are re-alleged and incorporated as though set forth in full herein.

2. By a letter of June 30, 2010, and related communications, an attorney for LS advised Shaun Hayes, Michael Litz and Timothy Murphy that LS was rejecting any liability on the note. Eighteen Investments failed to pay real estate taxes on a number of properties listed as security on the LS loan. By August, 2010, Eighteen Investments was facing foreclosure on those properties by St. Louis County to recover the delinquent taxes owed by Eighteen Investments for 2007, 2008 and 2009. Shaun Hayes and Michael Litz caused $99,266.46 to be added to the LS loan to pay those delinquent taxes. LS and his attorney we not made aware of this addition to the loan and they continued to deny liability on the loan.

3. On or about August 23, 2010, in the Eastern District of Missouri and elsewhere,

SHAUN R. HAYES and MICHAEL H. LITZ,

the defendants, acting individually and aided and abetted by one another and others, knowingly executed and attempted to execute the scheme set forth in Count 1 as incorporated herein by causing $99,266.46 to be added to the LS loan to pay delinquent tax liabilities of Eighteen Investments.

In violation of Title 18, United States Code, Sections 1344 and 2.

COUNT EIGHT

The Grand jury further charges that:

1. The allegations set forth in paragraphs 1 through 35 of Count 1 are re-alleged and incorporated as though set forth in full herein.

2. Shaun Hayes and Michael Litz caused Excel Bank to buy notes on certain Eighteen Investments properties on which other banks held first deeds of trust and Excel Bank held second deeds of trust. Some of those properties were listed as security for the LS loan. Eighteen Investments failed to make payments on some of those first deeds of trust, thereby jeopardizing Excel Bank's security position. When certain banks holding first deeds of trust threatened foreclosure due to Eighteen Investments' failure to pay, Shaun Hayes and Michael Litz caused Excel Bank to make a series of substandard "Friend of Shaun" loans to Murdoch Management LLC to generate funds to avoid foreclosures. The loans to Murdoch Management totaled approximately $726,700.00 of which some $381,000.00, more or less, was used to pay off the first deeds of trust in order to avoid foreclosure. This constituted a substantial reduction in the value of the security for the Excel Bank loan. The proceeds of the loans to Murdoch Management also were used to pay interest and some of the principal on the LS loan thereby artificially reducing that loan. Some of the proceeds were also used to make payments on a judgment against Eighteen Investments on an unrelated matter.

3. From on or about July 1, 2010, to on or about December 31, 2010, in the Eastern District of Missouri and elsewhere,

SHAUN R. HAYES and MICHAEL H. LITZ,

the defendants, acting individually and aided and abetted by one another and others, knowingly executed and attempted to execute the scheme set forth in Count 1 as incorporated herein by causing a series of substandard loans to be made to Murdoch Management LLC to artificially reduce the LS loan, said loans to Murdoch Management further reducing the value of the security for the LS loan and some of the proceeds of the loans to Murdoch Management being deflected to pay unrelated obligations of Eighteen Investments.

In violation of Title 18, United States Code, Sections 1344 and 2.

COUNT NINE

The Grand Jury further charges that:

1. The allegations set forth in paragraphs 1 through 20 and 22 through 35 of Count 1 are re-alleged and incorporated as though set forth in full herein.

2. On or about December 1, 2010, in the Eastern District of Missouri and elsewhere,

SHAUN R. HAYES

the defendant, acting with the intent to injure and defraud Excel Bank, an insured bank the deposits of which were insured by the Federal Deposit Insurance Corporation, and to deceive any officer of Excel Bank and any agent and examiner appointed to examine the affairs of such bank, knowingly caused to be made a false entry in the books, statements and reports of Excel Bank, in that, the defendant caused a Loan Status Report to be prepared which falsely supported the viability of the LS loan and which falsely stated that "the primary source of repayment will come from the borrower's cash flow" even though LS denied liability on the note and there was an agreement by the defendant to forego collection on the LS note.

In violation of Title 18, United States Code, Section 1005.

COUNT TEN

The Grand Jury further charges that:

1. The allegations set forth in paragraphs 1 through 10 of Count 1 are re-alleged and incorporated as though set forth in full herein.

2. Throughout 2009 Shaun Hayes was an agent and employee of Excel Bank and Shaun Hayes was connected to Excel Bank as a consultant, as an owner and director of the bank holding company which owned Excel Bank and through the substantial control he exercised over loans made by Excel Bank.

3. On or about April 3, 2009, Shaun Hayes was paid $305,000.00 through a transaction financed by Excel Bank which constituted unlawful self-dealing by Shaun Hayes. As part of this transaction, business entities associated with Michal Litz received in excess of $300,000.00. The source of the payments was the proceeds of a loan made by Excel Bank to Rolling Hills Apartments LLC. Shaun Hayes, Michael Litz and another individual agreed to share in the proceeds of a refinancing transaction in which Excel Bank loaned approximately $2,600,000.00 to Rolling Hills Apartments LLC in order for that entity to be free and clear of a $1,300,000.00 liability, more or less, which was the result of a loan Excel Bank had made to Maya Lane LLC. That entity was used by Shaun Hayes, Michael Litz and another individual in February, 2009, to purchase, at a discount, the note and loan on which Rolling Hills Apartments LLC was

delinquent at that time and facing foreclosure. Shaun Hayes and Michael Litz were silent and undisclosed partners in Maya Lane, LLC.

4. Shaun Hayes caused Excel Bank to make the loan on the Rolling Hills Apartments in the amount of $2,600,000.00 which was far greater than the $1,300,000.00 liability that was removed. Shaun Hayes caused Excel Bank to make the loan to Maya Lane LLC and then the replacement loan to Rolling Hills Apartments LLC in order to create a pool of $1,000,000.00, more or less, which he shared with Michael Litz and the other individual involved with them. None of the money shared by Shaun Hayes, Michael Litz and the other individual was paid out for the benefit of Rolling Hills Apartments LLC which was a distressed business and was made liable for the full $2,600,000.00.

5. Shaun Hayes concealed his interest and Michael Litz's interest in the loans involving the Rolling Hills Apartments from the board of directors and the loan committee at Excel Bank. In 2009, Michael Litz and his related business entities were not creditworthy due, in part, to the mounting delinquencies of Eighteen Investments. As of February, 2009 Shaun Hayes was subject to a lending limit at Excel Bank, so any loan made to him or for his benefit would have risked exceeding that lending limit in violation of state and federal standards. Michael Litz assisted Shaun Hayes in concealing his interest in these loan transactions by causing the payment of Shaun Hayes's share to be run through a series of entities which Michael Litz controlled. Michale Litz caused a cashier's check constituting loan proceeds in the amount of $1,031,223.67 and payable to Maya Lane LLC to be deposited into the account of Cinnamon Partnership LLC which Michael Litz controlled. From that account, Michael Litz caused a check in the amount of $305,000.00 to be paid out to the other individual involved with him and Shaun Hayes and

also caused a check made payable in the amount $305,000.00 to be deposited into the Bellington Mortgage Partnership account which he also controlled. From that account Michael Litz caused a cashier's check to be purchased in the amount of $305,000.00 and made payable to A&S Marketing which was controlled by Shaun Hayes. Michael Litz caused the payment of Shaun Hayes's share in this refinancing transaction to be made through four entities, each step in this process occurring on or about April 3, 2009.

6. From on or about February 1, 2009, up to and including on or about April 30, 2009, in the Eastern District of Missouri and elsewhere,

SHAUN R. HAYES and MICHAEL H. LITZ,

the defendants, acting individually and aided and abetted by one another and others, and acting with the intent to injure and defraud Excel Bank, an insured bank and a financial institution the deposits of which were insured by the Federal Deposit Insurance Corporation, did willfully misapply moneys, funds and credits of and intrusted to the custody and care of Excel Bank in that the defendants: (1) caused $305,000.00 of proceeds of a loan made by Excel Bank for the refinancing of the obligations of Rolling Hills Apartments LLC to be paid unlawfully to and for the benefit of Shaun Hayes; and (2) caused proceeds of that same loan in amounts in excess of $300,000.00, more or less, to be paid out to entities associated with Michael Litz.

In violation of Title 18, United States Code, Sections 656 and 2.

FORFEITURE ALLEGATION

The Grand Jury further finds by probable cause that:

1. Pursuant to Title 18, United States Code, Sections 982(a)(2), upon conviction of an offense in violation of Title 18, United States Code, Section 1344 as set forth in Counts 1, 5 and

7-8, the defendants shall forfeit to the United States of America any property constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of such violations.

2. Subject to forfeiture is money in the amount of $906,223.38, more or less, and a sum of money equal to the total value of any property, real or personal, constituting or derived from any proceeds traceable to such violations.

3. If any of the property described above, as a result of any act or omission of the defendants:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty,

the United States of America will be entitled to the forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p).

A TRUE BILL.

____
FOREPERSON

RICHARD G. CALLAHAN
United States Attorney

____
JAMES E. CROWE, JR. #6674MO
Assistant United States Attorney